



AGENDA ITEM EXECUTIVE SUMMARY

Agenda Item number: IIC3

Title: Motion to approve An Ordinance Conditionally Granting Approval of a Map Amendment from RS-1 Low Density Suburban Single-Family Residential District to RS-2 Suburban Single-Family Residential District for 1001 N. 5th Ave.

Presenter: Rita Tungare

Meeting: City Council Date: September 8, 2020

Proposed Cost: N/A

Budgeted Amount: N/A

Not Budgeted:

Executive Summary (if not budgeted please explain):

Background:

On August 10, 2020 Planning & Development Committee voted on a motion to continue discussion of an application for Map Amendment to rezone 1001 N. 5th Ave.

Proposed is to rezone two parcels at the northwest corner of N. 5th and Delnor Avenues from RS-1 to RS-2. This will render the vacant western parcel a buildable lot for a single-family home and will bring the corner parcel, which contains a single-family home, into zoning compliance.

The item was continued to allow additional time for the applicant and the neighboring property owner to the west (300 Delnor Ave.) to reach an agreement regarding the west side yard setback for the vacant property.

Legal Agreements

Two legal documents have been prepared by the applicant’s attorney. City Staff and the City Attorney have reviewed these documents and find them acceptable. The neighboring property owner to the west (300 Delnor Ave.) is also in agreement with the documents.

1. Building Setback Agreement – This deed restriction imposes a 25 ft. setback from the west property line of the vacant parcel (This is in excess of the 6 ft. side yard setback required in the RS-2 District). The setback restriction will run with the land and shall not be modified without consent of the City.
2. Landscape Easement and Maintenance Agreement – This is an agreement between the owner of the vacant parcel and the neighbor to the west (300 Delnor Ave.). It reserves a perpetual landscape easement over the western 3 ft. of the vacant parcel and requires the property owner maintain trees within the easement and install evergreen screening. An enforcement provision states the City cannot issue a building permit for a new house on the vacant parcel until the plantings are installed.

Attached Ordinance:

Staff has prepared an ordinance for conditional approval of the Map Amendment. The ordinance states the Map Amendment shall not take effect until the two documents listed above are executed and recorded with the Kane County Recorder’s Office. If this condition is not met within 45 days, the Map Amendment shall not be effective and the property shall remain zoned RS-1.

Attachments (please list):

Ordinance

Recommendation/Suggested Action (briefly explain):

Motion to approve An Ordinance Conditionally Granting Approval of a Map Amendment from RS-1 Low Density Suburban Single-Family Residential District to RS-2 Suburban Single-Family Residential District for 1001 N. 5th Ave.

City of St. Charles, Illinois
Ordinance No. 2020-Z-

**An Ordinance Conditionally Granting Approval of a Map Amendment from
RS-1 Low Density Suburban Single-Family Residential District to
RS-2 Suburban Single-Family Residential District for 1001 N. 5th Ave.**

WHEREAS, on or about May 14, 2020, Jeffrey Johnson (“Applicant”) filed a petition for Map Amendment from the RS-1 Low Density Suburban Single-Family Residential District to the RS-2 Suburban Single-Family Residential District for the property located at 1001 N. 5th Avenue, legally described on Exhibit “A” attached hereto and incorporated herein (“Subject Property”); and,

WHEREAS, the required Notice of Public Hearing on said petition for Map Amendment was published on or about June 18, 2020 in a newspaper having general circulation within the City, to-wit, the Daily Herald newspaper, as required by the statutes of the State of Illinois and the ordinances of the City; and,

WHEREAS, pursuant to said Notice, the Plan Commission conducted a public hearing on or about July 7, 2020, July 21, 2020, and August 4, 2020 on said petition in accordance with the statutes of the State of Illinois and the ordinances of the City; and,

WHEREAS, at said Public Hearing, the Applicant presented testimony in support of said petition and all interested parties had an opportunity to be heard; and,

WHEREAS, the Plan Commission recommended approval of said petition for Map Amendment on or about August 4, 2020; and,

WHEREAS, the Planning & Development Committee of the City Council recommended approval of said petition for Map Amendment on or about August 10, 2020; and,

WHEREAS, the City Council of the City of St. Charles has received the recommendations of the Plan Commission and Planning & Development Committee and has considered the same.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF ST. CHARLES, KANE AND DUPAGE COUNTIES, ILLINOIS, as follows:

1. The preambles set forth hereinabove are incorporated herein as substantive provisions of this Ordinance as though fully set out in this Section 1.

2. That passage of this Ordinance shall constitute conditional approval of the petition for Map Amendment for the Subject Property from the RS-1 Low Density Suburban Single-Family Residential District to the RS-2 Suburban Single-Family Residential District, and said Map Amendment shall not be effective until the following documents are fully executed and recorded with the Kane County Recorder’s Office:

- a. A deed restriction imposing a principal Building Set Back Line of twenty-five (25) feet from the west property line of the Subject Property, in substantially the form attached as Exhibit "B"
- b. An agreement with the property owner to the west (300 Delnor Ave.) of the Subject Property regarding Landscape Installation and Maintenance, in substantially the form attached as Exhibit "C".

3. In the event the conditions outlined in Section 2 above not met to the satisfaction of the City by October 23, 2020 (45 days from approval of this ordinance), said Map Amendment shall not be effective and the Subject Property shall remained zoned RS-1.

4. Based upon the Applicant's petition and the evidence presented at the Public Hearing, subject to compliance with the conditions outlined in Section 2 above, the Findings of Fact for Map Amendment attached hereto and incorporated herein as Exhibit "D" are expressly adopted by the corporate authorities of the City.

5. That the Subject Property shall be developed only in accordance with all ordinances of the City as now in effect and as hereafter amended.

6. That after the adoption and approval hereof, the Ordinance shall (i) be printed or published in book or pamphlet form, published by the authority of the Council, or (ii) within thirty (30) days after the adoption and approval hereof, be published in a newspaper published in and with a general circulation within the City of St. Charles.

PRESENTED to the City Council of the City of St. Charles, Kane and DuPage Counties, Illinois this 8th day of September 2020.

PASSED by the City Council of the City of St. Charles, Kane and DuPage Counties, Illinois this 8th day of September 2020.

APPROVED by the Mayor of the City of St. Charles, Kane and DuPage Counties, Illinois this 8th day of September 2020.

Raymond P. Rogina, Mayor

Attest:

Charles Amenta, City Clerk

Vote:

Ordinance No. 2020-Z-

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Ayes:

Nays:

Absent:

Abstain:

Date: _____

EXHIBIT "A"

LEGAL DESCRIPTION OF SUBJECT PROPERTY

Parcel 1:

THAT PART OF THE NORTH HALF OF SECTION 27, TOWNSHIP 40 NORTH, RANGE 8 EAST OF THE THIRD PRINCIPAL MERIDIAN, DESCRIBED AS FOLLOWS: BEGINNING AT THE SOUTHEAST CORNER OF LOT 3 OF DELNOR PARK, ADDITION THREE, THENCE NORTH ALONG THE EAST LINE OF LOTS C AND D, 134.80 FEET TO A POINT 143 FEET SOUTH OF THE SOUTHEAST CORNER OF LOT A OF SAID DELNOR PARK, ADDITION THREE; THENCE EAST ALONG A LINE FORMING AN ANGLE OF 90 DEGREES 24 MINUTES MEASURED FROM SOUTH TO EAST, WITH THE LAST DESCRIBED LINE 90 FEET; THENCE SOUTH PARALLEL WITH THE EAST LINE OF SAID LOTS D AND C, 119.25 FEET TO THE NORTHERLY LINE OF DELNOR AVENUE; THENCE SOUTHWESTERLY ALONG SAID NORTHERLY LINE 91.45 FEET TO THE POINT OF BEGINNING, IN THE CITY OF ST. CHARLES, KANE COUNTY, ILLINOIS.

Permanent Tax No: 09-27-203-006

Parcel 2:

THAT PART OF THE NORTHEAST QUARTER OF SECTION 27, TOWNSHIP 40 NORTH, RANGE 8 EAST OF THE THIRD PRINCIPAL MERIDIAN, DESCRIBED AS FOLLOWS: COMMENCING AT THE SOUTHEAST CORNER OF LOT C OF DELNOR PARK, ADDITION THREE: THENCE NORTH ALONG THE EAST LINE OF LOTS C AND D OF SAID SUBDIVISION 134.80 FEET TO A POINT 143 FEET SOUTH OF THE SOUTHWEST CORNER OF LOT A OF SAID DELNOR PARK, ADDITION THREE; THENCE EAST ALONG A LINE FORMING AN ANGLE OF 90 DEGREES 24 MINUTES MEASURED FROM SOUTH TO EAST, WITH THE LAST DESCRIBED LINE 90 FEET FOR THE POINT OF BEGINNING; THENCE CONTINUING EAST ALONG THE LAST DESCRIBED LINE 148 FEET TO THE WEST LINE OF FIFTH AVENUE NORTH; THENCE SOUTH ALONG SAID WEST LINE 94 FEET TO THE NORTHERLY LINE OF DELNOR AVENUE; THENCE WESTERLY ALONG SAID NORTHERLY LINE OF 150.44 FEET TO A LINE DRAWN SOUTH PARALLEL WITH THE EAST LINE OF SAID LOTS D AND C FROM THE POINT OF BEGINNING.

Permanent Tax No: 09-27-203-007

EXHIBIT "B"

IMPOSITION OF BUILDING SETBACK LINE ON PARCEL OF REAL PROPERTY

Prepared by and return to:
John Hoscheit
Hoscheit, McGuirk, McCracken & Cuscaden PC
1001 E. Main St. Ste. G
St. Charles, IL 60174

IMPOSITION OF BUILDING SET-BACK LINE ON PARCEL OF REAL PROPERTY

_____, as owner of the vacant parcel real property located on
Delnor Avenue in the City of St. Charles, Illinois and Legally described as follows:

_____ (hereinafter the "Property") hereby
imposes on said Property a building setback line of twenty-five (25) feet from the west property line thereof.
As a result, no building shall be constructed on the Property within twenty-five (25) feet of the westerly
property line thereof.

The setback line restriction established herein shall run with the land and shall not be subject to
modification without the written consent of the City of St. Charles, Illinois.

Dated this ___ day of _____, 2020

Owner:

State of Illinois)

County of Kane)

This Document has been subscribed and sworn to me on _____, 2020 by
_____ as their free and voluntary act.

Notary Public, State of Illinois

My commission expires _____

EXHIBIT "C"

LANDSCAPE EASEMENT AND MAINTENANCE AGREEMENT

LANDSCAPE EASEMENT AND MAINTENANCE AGREEMENT

THIS LANDSCAPE EASEMENT AND MAINTENANCE AGREEMENT (the “Agreement”) is entered into as of this ____ day of _____, 2020, by and between JCS Refined Homes, L.L.C., a Limited Liability Company (“JCS”), and Kirsten R. Snodgrass, as Trustee of the Kirsten R. Snodgrass Declaration of Trust dated April 9, 2007 (“Trust”).

RECITALS

WHEREAS, JCS owns that parcel of vacant real estate legally described on Exhibit “A” attached hereto and commonly known as ____ Delnor Avenue St. Charles, IL 60174 (the “JCS Parcel”); and

WHEREAS, Trust owns that parcel of improved real estate legally described on Exhibit “B” attached hereto and commonly known as 300 Delnor Avenue St. Charles, IL 60174 (the “Trust Parcel”); and,

WHEREAS, The JCS Parcel and the Trust Parcel are contiguous to each other and along the contiguous property line of said Parcels there are located certain trees and landscaping, and further in connection with the proposed development of the JCS Parcel JCS has agreed to install additional landscaping; and,

WHEREAS, Pursuant to the terms of this Agreement the JCS and Trust desire to provide each other certain rights and establish certain responsibilities with respect to the aforementioned trees and landscaping.

NOW, THEREFORE, in consideration of the mutual observance of the covenants, terms, and conditions contained in this Agreement, and of other good and valuable consideration the receipt and sufficiency of which are hereby acknowledged, the parties do hereby agree as follows:

AGREEMENT

1. Grants of Easement.
 - (a) *Definitions.* The following term “Landscape Easement Parcel” shall mean that strip of the land consisting of the westerly three (3) feet of the JCS Parcel and the contiguous easterly lot line of the Trust Parcel.
 - (b) *Landscape and Tree Maintenance Easement.* Subject to the provisions of paragraph 4 below, JCS and Trust do hereby grant each other a nonexclusive easement (the “Landscape Easement”) over and upon the Landscape Easement Parcel for the sole and exclusive purpose of installing, constructing, inspecting, replacing, repairing, and maintaining, the landscape improvements now or hereafter located thereon, subject to the covenants and restrictions set forth in Paragraph 3 hereunder.

2. Permanent Nature of Easements. Subject to the provisions of paragraph 3 below, this Easement Agreement, the easements granted hereby and all of the rights, duties and obligations of the parties with respect thereto shall be deemed to run with the land in perpetuity, including the benefits and burdens, upon the property described herein. The easements granted hereby shall be non-exclusive, perpetual, permanent easement, appurtenant to the JCS Parcel and the Trust Parcel. It is the intention of the parties that the easements granted herein are appurtenant easements, and not easements in gross, and that this Easement Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective grantees, successors and assigns.

3. Covenants and Restrictions.

- (a) The Parties hereto shall exercise their easement rights hereunder only in such a manner as shall at all times comply with all applicable laws, rules, and regulations.
- (b) Except as expressly allowed herein, Grantor covenants and agrees that Grantor, its agents, servants, employees, tenants, invitees, legal representatives, successors and assigns shall not do anything which interferes with or obstructs the purposes for which the Fence Easement and the Landscape Easement are granted, or take any action which could interfere with said easements.
- (c) JCS agrees that it shall be solely responsible for the trimming, removal, and replacement of the trees located in the Landscape Easement. JCS agrees that it shall maintain said trees during the course of constructing said improvements. The maintenance of the trees located in the Landscape Easement shall be the responsibility of the owner of the JCS Parcel.
- (d) JCS agrees that weather permitting, within the current planting season (or as soon as is reasonably practical thereafter), JCS shall install (at the expense of JCS) landscape screening (consisting of evergreen coniferous trees such as arborvitae) appropriate for placement under the existing power line. The Screening plants shall be a minimum of six (6) feet tall when planted, shall be installed in accordance with industry standards, shall be installed at least two (2) feet away from any structures, and shall be centered within the Landscape Easement. The screening plants shall be installed beginning forty-eight (48) feet from the southerly lot line of the Parcels and continue in a row extending north within the Landscape Easement area for a distance of forty (40) feet. Once installed the maintenance of the screening plants shall be the responsibility of the owner of the JCS Parcel.

4. Indemnification. JCS hereto agrees to indemnify and hold harmless Grantor, its lessees, successors and assigns, from and against any and all liability, damage, expense and claims arising from (a) mechanics' liens filed with respect to work performed

them on the Landscape Easement Parcel by or for the Grantee, and (b) the injury or death of any person, or from the loss of or damage to any property, including without limitation, costs and reasonable attorneys' fees, arising from a Party's use of the Landscape Easement.

5. Enforcement. JCS shall not request, and the City of St. Charles shall not issue, a building permit for construction of a house on the parcel without demonstrating that the Covenants and Restrictions laid forth in this agreement have been complied with. The City of St. Charles shall have full authority to require JCS or future owners of the JCS parcel to comply with this agreement.

6. Miscellaneous Provisions.

(a) *Covenant of Ownership and Authority.* Each Party covenants and warrants unto the other Party that the Party is their respective Parcel and has the full right, title, capacity and authority to grant the easement and establish the responsibilities granted and created herein and that the consent of any other person or entity is not necessary for the execution and performance of this Agreement.

(b) *Compliance with Applicable Laws.* Both parties covenant and agree that they have complied with all applicable laws, statutes and regulations necessary and have all requisite power and authority to enter into this Agreement.

(c) *Severability.* If any one or more of the provisions contained in this Agreement shall, for any reason, be held invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provisions hereto, and this Agreement shall be construed as if such invalid, illegal or unenforceable provision and not been contained herein; provided however, that if permitted by applicable law, any invalid, illegal or unenforceable provision may be considered in determining the

intent of the parties with respect to the provisions of this Agreement.

(d) *Non-waiver.* The failure by a party to enforce any provision of this Agreement against the other party shall not be deemed to be a waiver of the right to do so thereafter

(e) *Modification of Agreement* This Agreement may be modified or amended only in a writing signed by both of the parties hereto, or their successors or assigns, as the case may be.

- (f) *Captions.* The paragraph captions are inserted for convenience of reference and are in no way to be construed as a part of this Agreement or as a limitation on the scope of the paragraphs to which they refer.
- (g) *Entire Agreement* All prior negotiations and agreements between the parties hereto are superseded by this Agreement, and there are no representations, warranties, understandings or agreements other than those expressly set forth herein.
- (h) *Joint Preparation.* This Agreement is and shall be deemed and construed to be the joint and collective work product of each Party and, as such, this Agreement shall not be construed against either party, as the otherwise purported drafter of same, by any court of competent jurisdiction in order to resolve any inconsistency, ambiguity, vagueness or conflict, if any, in the terms or provisions contained herein.
- (i) *Law Governing.* This Easement Agreement shall be governed by and construed in accordance with the laws of the State of Illinois. In any legal proceeding between the parties hereto, venue shall exclusively lie in the Sixteenth Judicial Circuit of Kane County, Illinois. Each party hereby waives any objection it may have to commencement or transfer of any such proceeding to either of said venues and hereby affirmatively consents to same.
- (j) *Insurance.* JCS, or its contractors, at its own expense, shall be required to procure and maintain in full force and effect a policy or policies of commercial general liability insurance against any liability or claim for personal liability, wrongful death, property damage or contractual liability for which such Party is responsible under this agreement or by law, with financially responsible insurers authorized to transact business in the state of Illinois with a combined single limit of not less than One Million and 00/100 Dollars (1,000,000.00) per occurrence. JCS or its contractors must maintain this insurance throughout construction of the landscape screening, and during any tree trimming or removal operations. Certificates of insurance must be made available upon request of the Trust.
- (k) The Recitals set forth herein are incorporated into the Agreement.

IN WITNESS WHEREFORE, the undersigned has executed this Easement Agreement as ___ day of ___, 2020

JCS Refined Homes, L.L.C.

Kirsten R. Snodgrass Declaration of Trust
Dated April 9, 2007

By: _____
_____, Its' Manager
STATE OF ILLINOIS)
)SS.
COUNTY OF KANE)

By: _____
Kirsten R. Snodgrass, Trustee

I, the undersigned, a Notary Public, in and for the County and State aforesaid, do hereby certify that _____, Manager of JCS Refined Homes, L.L.C., an _____ limited liability company, personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and severally acknowledged that as such Manager, he/she signed and delivered the said instrument pursuant to authority given by the LLC as its free and voluntary act, and as the free and voluntary act and deed of said limited liability company, for the uses and purposes therein set forth.

Given under my hand and official seal, this _____ day of _____, 2020

NOTARY PUBLIC

STATE OF ILLINOIS)
)SS.
COUNTY OF KANE)

I, the undersigned, a Notary Public, in and for the County and State aforesaid, do hereby certify that Kirsten R. Snodgrass, as Trustee of the Kirsten R. Snodgrass Declaration of Trust dated April 9, 2007 personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and severally acknowledged that she signed and delivered as the free and voluntary act for the uses and purposes therein set forth.

Given under my hand and official seal, this _____ day of _____, 2020

NOTARY PUBLIC

EXHIBIT A
JCS Parcel

THAT PART OF THE NORTH HALF OF SECTION 27, TOWNSHIP 40 NORTH, RANGE 8 EAST OF THE THIRD PRINCIPAL MERIDIAN, DESCRIBED AS FOLLOWS: BEGINNING AT THE SOUTHEAST CORNER OF LOT C OF DELNOR PARK, ADDITION THREE; THENCE NORTH ALONG THE EAST LINE OF LOTS C AND D, 134.80 FEET TO A POINT 143 FEET SOUTH OF THE SOUTHWEST CORNER OF LOT A OF SAID DELNOR PARK, ADDITION THREE; THENCE EAST ALONG A LINE FORMING AN ANGLE OF 90 DEGREES 24 MINUTES MEASURED FROM SOUTH TO EAST, WITH THE LAST DESCRIBED LINE 90 FEET; THENCE SOUTH PARALLEL WITH THE EAST LINE OF SAID LOTS D AND C, 119.25 FEET TO THE NORTHERLY LINE OF DELNOR AVENUE; THENCE SOUTHWESTERLY ALONG SAID NORTHERLY LINE 91.45 FEET TO THE POINT OF BEGINNING; IN THE CITY OF ST. CHARLES, KANE COUNTY, ILLINOIS.

PIN: 09-27-203-006

EXHIBIT B
Trust Parcel

LOT C OF DELNOR PARK ADDITION 3, ST. CHARLES IN THE CITY OF ST. CHARLES,
KANE COUNTY, ILLINOIS

PIN: 09-27-129-006

EXHIBIT "D"

FINDINGS OF FACT FOR MAP AMENDMENT

1. The existing uses and zoning of nearby property.

The properties surrounding the subject property are zoned RS-1 on the north, east, and west sides, and all appear to be single family uses. The property to the southeast is zoned OR and is occupied by the St. Charles Episcopal Church. The property to the south is zoned RM-2, is listed as a Planned Unit Development, and is occupied by Delnor Assisted Living.

2. The extent to which property values are diminished by the existing zoning restrictions.

The property values of the subject properties are greatly reduced by the current zoning, because even though there are two tax parcels, both individual tax parcels are below the 18,000 square foot minimum lot size, creating a non-conforming use on the existing house parcel, and an unbuildable lot on the vacant parcel next door. If the two parcels are both rezoned to RS-2, our research leads us to believe that the market value of the bare land alone on each individual parcel would be \$120,000, or \$240,000 for both. The current listed asking price for both parcels is \$185,000, including the improvements on one parcel.

3. The extent to which the reduction of the property's value under the existing zoning restrictions promotes the health, safety, morals or general welfare of the public.

Because the current zoning of the subject properties does not allow the more western parcel to be built on, it may facilitate a picture of large and open lots in the neighborhood, though in their current overgrown and dilapidated state, we believe this effect is minimal. In their current state, we do not believe that the subject properties create any real value to the public

4. The suitability of the property for the purposes for which it is presently zoned, i.e. the feasibility of developing the property for one or more of the uses permitted under the existing zoning classification.

The properties are currently not suitable for the purposes for which they are zoned. A single-family residential use is appropriate, however the existing RS-1 zoning does not make development feasible, and creates a non-conforming use of the existing house. The subject properties can not be used for any of the uses currently permitted, because of the current zoning.

5. The length of time that the property has been vacant, as presently zoned, considered in the context of the land development in the area where the property is located.

As far as we were able to discern, the western parcel has always been vacant. It is one of

very few remaining vacant parcels in this highly desirable area of St. Charles.

6. The evidence, or lack of evidence, of the community's need for the uses permitted under the proposed district.

With the proposed RS-2 zoning, the use of the parcels will remain single-family residential. The neighborhood in which the properties are located is highly desirable, and home prices have steadily risen, proving a demand for more quality housing stock. Additionally, the change in zoning is the only thing that would make it make sense financially to restore the existing 1925 house to its former glory, creating an attractive entrance into downtown St. Charles along Rt. 25.

7. The consistency of the proposed amendment with the City's Comprehensive Plan.

The Comprehensive Plan dated 2013 recommends the following for detached single-family residential neighborhoods: "The City should investigate new methods to improve the conditions of all residential neighborhoods, including maintenance programs and incentives for developing vacant properties, while continuing to enforce building and design codes, regulations, and standards." The proposed RS-2 zoning will make it financially feasible for us to restore the 1925 house, therefore improving the condition of the neighborhood and bringing another house up to code. It will also allow for the future development of a single-family home on the vacant property.

8. Whether the proposed amendment corrects an error or omission in the Zoning Map.

To our knowledge, the current RS-1 zoning of the subject properties is not the result of an error or omission.

9. The extent to which the proposed amendment creates nonconformities.

The proposed amendment to the zoning map does not create any nonconformities. In fact, it corrects one, as the existing house is nonconforming under the current zoning.

10. The trend of development, if any, in the general area of the property in question.

There is a trend of development and improvement in the area. On the northern end of the same block as the subject properties, there are two homes that have recently been extensively rehabbed, and it appears that there is at least one custom home lot available from a local homebuilder.